



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, MNDL-S FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking the following relief:

- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- a monetary order for unpaid rent or utilities;
- a monetary order for damage to the rental unit or property;
- an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord testified that the tenant was served with the application, evidence and notice of this hearing (the Hearing Package) by email on May 12, 2020. The landlord has provided a copy of an email with attachments addressed to the tenant and a tracking program document showing that the tenant had received and opened the email the same day. The landlord testified that the email address is the same email address that the parties had used previously, and that the attachments were the Application for Dispute Resolution, evidentiary material of the landlord and notice of this hearing. I am satisfied that the tenant has been served in accordance with the Ministerial Order dated March 30, 2020.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and specifically for liquidated damages and late fees?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on March 1, 2019 on a month-to-month basis but is fixed from November 1 to February 28 each year. The tenant moved out sometime in December, 2019. Rent in the amount of \$1,500.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is the upper floor of a home, and a lower level suite is also tenanted.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$4,400.00:

- \$750.00 for repairing the wall and stairs;
- \$1,500.00 rent for January, 2020;
- \$1,500.00 rent for February, 2020;
- \$500.00 Re-rent costs;
- \$25.00 late fee for January, 2020;
- \$25.00 late fee for February, 2020; and
- \$100.00 for the dispute resolution application fee.

A move-in condition inspection report was completed at the beginning of the tenancy, but the tenant was not present for the move-out condition inspection, which the landlord completed in the absence of the tenant, and a copy has been provided for this hearing. On December 27, 2019 the tenant sent a text message to the landlord saying that he had moved out, dropped an antique gas pump and damaged the walls and stairs. A copy has been provided for this hearing. The landlord paid a handy-man \$750.00 for

the repairs and told the handy-man that the most the landlord could pay was \$750.00, which he paid including GST. No receipts have been provided for this hearing.

On December 6, 2019 the tenant advised the landlord that he found a place and would be moving on December 15, 2020. The landlord attempted to mitigate by placing an advertisement on Craigslist on December 12, 2019. A copy of the advertisement has been provided as evidence for this hearing which advertises the rental unit at \$1,695.00 per month. The landlord testified that it is full market rent, and had been renting to the tenant at a lower amount than market rent. The rental unit was re-rented for the increased amount effective March 1, 2020. The landlord claims unpaid rent from the tenant for January and February, 2020 in the amount of \$1,500.00 for each of those months.

The tenancy agreement states: “3. Term of Tenancy. This tenancy is for a MONTH TO MONTH TERM, beginning at 12:01 pm on the March 1, 2019 after the term ends on (blank) it converts to a MONTH TO MONTH TERM and a FIXED TERM each and every year from November 1 – February 28.”

The tenancy agreement also specifies liquidated damages of \$500.00, plus all costs associated with finding a new tenant, and other costs, including interest of 12% per annum for any money owed, in the event that the tenant vacates prior to the end of the Term. The landlord claims liquidated damages in the amount of \$500.00.

The tenancy agreement provides for late fees for late payment of rent of \$25.00, for which the landlord claims for the months of January and February, 2020.

The tenant has not provided the landlord with a forwarding address in writing, nor has the tenant served the landlord with an Application for Dispute Resolution claiming the security deposit, and the landlord seeks to keep the security deposit in partial satisfaction of the claim.

Analysis

Firstly, the term of the tenancy cannot be a month-to-month and a fixed-term; it's one or the other, or a fixed term ending on a specific date and then month-to-month thereafter. Given that the tenancy agreement does not indicate an end date of the fixed term, I find that the term of the tenancy was on a month-to-month basis.

I accept the undisputed testimony of the landlord that the tenant notified the landlord that he was moving out without giving a full month's notice as required by the *Residential Tenancy Act*. Any notice that the tenant may have given at that time would

not be effective until the end of January, 2020. Therefore, I find that the landlord has established \$1,500.00 for January's rent.

However, having found that the tenancy was on a month-to-month basis, the landlord is not entitled to any further rent or liquidated damages. I think it's also important to point out that the term in the tenancy agreement that speaks to liquidated damages states that other fees will also be applied to cover costs associated with finding a new tenant, and 12% interest on any money owing to the landlord. Liquidated damages is meant to cover the costs of re-renting, not in addition to. No interest can be charged by a landlord in a tenancy agreement. Further, the landlord attempted to mitigate, but advertising a rental unit for more rent than the tenant was paying, is not mitigation. The landlord's claim for February's rent, liquidated damages and late fee for February are dismissed.

I accept the landlord's claim for the late payment fee of \$25.00 for January's rent.

The landlord has not provided any proof of the costs associated with the damaged wall and stairs, and therefore has not proven the amount as required, and I dismiss that claim.

The *Residential Tenancy Act* places the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations, and because the landlord did not attempt to schedule a move-out condition inspection with the tenant, the landlord's right to claim against the security deposit for damages is extinguished. However, the landlord's right to make a claim against the security deposit for unpaid rent is not extinguished. I order the landlord to keep the \$750.00 security deposit in partial satisfaction of the claim.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

In summary, I find that the landlord has established a claim of \$1,500.00 for January's rent and \$25.00 late fee, as well as recovery of the filing fee. I order the landlord to keep the \$750.00 security deposit in partial satisfaction and I grant a monetary order in favour of the landlord for the difference totalling \$875.00 ($\$1,500.00 + \$25.00 + \$100.00 = \$1,625.00 - \$750.00 = \875.00).

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$750.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$875.00.

This order is final and binding and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 24, 2020

Residential Tenancy Branch